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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 352

LISE HAAS, *Petitioner*

v.

ROBERT B. ANDERSON, Secretary of the Treasury, and WHITNEY H. GILLILLAND, PEARL CARTER PACE and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on May 16, 1957.

OPINIONS BELOW

No opinion was filed in the District Court. The opinion of the Court of Appeals (App. pp. 1a-4a, infra) is not yet officially reported; it is printed as an appendix to this petition. The Proposed Decision and the

Final Decision of the Foreign Claims Settlement Commission are printed at pages 49-55 and 55-61, respectively, of the Joint Appendix.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on May 16, 1957 (App. p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Is the release by the United States of a private claim against a foreign country in the course of a lump sum settlement of international claims a taking of private property for public use within the meaning of the Fifth Amendment to the Constitution of the United States?

2. Where a claimant against a foreign country has requested the United States to espouse her claim, and the United States had made her claim a matter which was considered and released in arriving at a settlement whereby that foreign country provided a lump sum to cover American claims against it, and the claimant subsequently files a claim against the fund for a pro rata participation therein, does she have a "just compensation" right under the Fifth Amendment to participate in the fund?

3. Are the nonreviewability provisions of section 4(h) of the International Claims Settlement Act of 1949 applicable to a decision of the Foreign Claims Settlement Commission which if erroneous effectively deprives the claimant of a constitutional right to just compensation? If construed to preclude judicial re-

[1] The letters "J. A." as used throughout refer to the Joint Appendix as printed in the court below.

view, are those provisions in conflict with Article III and with the "due process" and "just compensation" provisions of the Fifth Amendment to the Constitution?

4. Do the nonreviewability provisions of the International Claims Settlement Act preclude the courts from reviewing the failure of the Foreign Claims Settlement Commission to obey mandates laid down in (a) the executive agreement which the Commission is administering and (b) the Act itself, which establishes the Commission and gives it authority to act?

5. Where the negotiators of an executive agreement regarding claims specifically intended that a particular claim should be eligible, even though it is not eligible under the general provisions of the agreement, and the statute creating the adjudicating agency provides that the agency shall apply the provisions of the claims agreement and of international law, justice and equity, is a decision of the administrative agency that the claim is ineligible reviewable by the courts as being beyond the jurisdiction of the agency, despite the nonreviewability provisions of the International Claims Settlement Act?

CONSTITUTIONAL PROVISION, EXECUTIVE AGREEMENT, AND STATUTES INVOLVED

Constitution of the United States, Amendment V: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Yugoslav Claims Agreement of 1948, 62 Stat. 2658 et seq., T.I.A.S. No. 1803, is printed at pages 9-17 of the Joint Appendix. A letter in the form of a release from the Secretary of State of the United States

addressed to the Ambassador of Yugoslavia, delivered concurrently with the Yugoslav Claims Agreement and asserted by petitioner to be a part of the Agreement or to be a side agreement to the basic Agreement, has no official citation but is printed at pages 36-40 of the Joint Appendix.

The International Claims Settlement Act of 1949, 64 Stat. 12, 22 U.S.C. 1621 et seq., is printed at pages 75-86 of the Joint Appendix. Section 4(h) of that Act, 22 U.S.C. 1623(h), provides as follows: "The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency or establishment of the United States or by any court by mandamus or otherwise."

Section 4(a) of that statute provides: "In the decisions of claims under this Act, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity."

STATEMENT OF THE CASE

On July 19, 1948 the United States entered into an executive agreement with the government of Yugoslavia, known as the Yugoslav Claims Agreement of 1948 (62 Stat. 2658), under which Yugoslavia agreed to pay to the United States the sum of $17,000,000 in "full settlement and discharge" of American claims against Yugoslavia for the nationalization or other taking of property which, at the time of taking, was owned directly or indirectly by an American national. The fund was to be distributed in accordance with methods to be adopted by the United States, and the

Foreign Claims Settlement Commission of the United States was ultimately established to adjudicate claims against the Fund.

Petitioner filed a claim against the Fund. That claim was denied by the Commission (J.A. 49-61) solely upon the ground that she was not a national of the United States at the time of the nationalization of the property involved. She then filed a complaint in the District Court (J.A. 1-8) against the Commissioners seeking to set aside the Commission's decision and to have her claim declared to be eligible for compensation from the Fund. The Secretary of the Treasury (originally George M. Humphrey; now, by substitution, Robert B. Anderson. R. 96-a.), who must ultimately disburse the funds, was also made a defendant. The District Court dismissed the complaint for lack of jurisdiction over the subject matter (J.A. 73-4) on January 29, 1957, and the Court of Appeals affirmed that dismissal[2] on May 16, 1957 (App., pp. 1a-4a).

The complaint which was dismissed stated the following facts:

(1) In 1940 petitioner was an equal owner, together with three other persons, of the stock of an American corporation named European Textile Corporation, which owned all the stock of Etexco A. G., a Swiss corporation which in turn owned one-third of the stock of a Yugoslav corporation known as "Dugaresa". The four co-owners were all "non-Aryans" within the meaning of the Nazi "Aryan" laws then pending application in Yugoslavia, and to avoid confiscation of the Dugaresa interests under those laws, it became neces-

[2] The opinion of the Court of Appeals (App., p. 2a) erroneously states that the Government's "motion for summary judgment" was granted below.

sary to eliminate one corporation, and to have the remaining stock held by an "Aryan". The four co-owners therefore eliminated the American corporation and transferred the Etexco shares to one Edwin A. Binder, an American citizen and an "Aryan", under an agreement whereby he would hold the stock and exercise all shareholder powers for the equal benefit of the four transferors. Binder served under this agreement and held record title to the Etexco stock from 1940 to 1950. The Dugaresa properties were nationalized by Yugoslavia on December 20, 1945, at which time Binder and the three co-owners other than petitioner were all citizens of the United States (Pars. 6-8, J.A. 3-4). (Petitioner did not become a citizen until 1952.)

(2) All the facts stated above, and particularly the noncitizenship of petitioner at the time of nationalization, were stated to the Department of State many times and in great detail during 1946, 1947 and 1948 by numerous documents filed with the Department. Those facts were known to the Department and to the negotiators of the Yugoslav Claims Agreement. The negotiators intended in the Agreement to provide for settlement of and compensation for the full Dugaresa claim of Binder and the four co-owners, including the interest of petitioner; the claim of petitioner, who was known to be a non-national of the United States, was intended to be a compensable claim against the Fund (Pars. 8-9, J. A. 4).

(3) On the same day that the Agreement was executed, the United States gave Yugoslavia a release in the form of a letter (J. A. 36-40) in which it was confirmed that certain itemized claims "were considered" by the negotiators "during the course of the negotiations leading up to the execution of" the Agreement and that it was "deemed and understood by the Govern-

ment of the United States that the *obligations* of the Government of the Federal People's Republic of Yugoslavia to such persons with respect to such property . . . at least to the extent indicated . . . *have been and are forever* fully settled and discharged by and by reason of the aforesaid agreement". The Binder claim, including the full interest of petitioner, was specifically set forth as one of these claims (Par. 10, J. A. 4, emphasis added).

(4) Subsequently Congress enacted the International Claims Settlement Act of 1949, 22 U.S.C. 1621 et seq., to provide for distribution of the $17,000,000 Fund. That legislation was proposed, sponsored, and handled in passage by the Department of State. While the bill was pending, counsel for petitioner raised with the Department (J. A. 41-44) the possibility that despite the facts stated above, the administrative agency created by the statute might refuse to recognize the Binder-Haas claim on the ground that petitioner was not a United States citizen at the time of the nationalization. Counsel for petitioner suggested an amendment to the bill which would specifically protect petitioner. The State Department, however, stated in reply (J. A. 46-47) that "it would not appear to be necessary to modify the bill," that (J. A. 45) "Mrs. Haas' claim through Mr. Binder was considered . . . at the time of the Agreement", and that a certified copy of a memorandum which it enclosed, set forth the "intent of the negotiators." The enclosed memorandum (J. A. 46), prepared by the chief American negotiator, stated that it was the intent of the negotiators that "the legal title resting in Mr. Binder should be recognized" and that "the claim of Mr. Binder, in its entirety, should be considered as a U. S. claim" even though the negotiators knew that Mrs. Haas, one of the four beneficiaries of the Binder claim, was not a United States

national at the time of confiscation. In reliance upon this assurance, petitioner refrained from pressing an amendment and so notified the Senate and House committees handling the bill, in a letter (J. A. 47-48) setting forth the above facts (Par. 11, J. A. 4-5).

(5) After passage of the International Claims Settlement Act, Binder and the four transferors filed joint and several claims relating to the Etexco interest in Dugaresa. On November 26, 1954 the Commission issued a Proposed Decision (J. A. 49-55) in which the claims of the three beneficial owners other than petitioner were allowed and identical awards (in the amount sought in the complaint) were made to each of the three; but the claim of petitioner, identical in all respects except for citizenship, was disallowed solely because she was not an American citizen at the time of the nationalization of Dugaresa. The Commission excluded Binder completely, on the ground that he was not the beneficial owner and thus not entitled to an award in his own name. The Proposed Decision made no reference to the two State Department letters, the chief negotiator's memorandum, or the letter-release. Upon receipt of the Proposed Decision, petitioner requested a "hearing" which, under the Commission's procedure, consisted of the filing of objections and a brief and an an opportunity for oral argument, held on December 14. On that same day the Department of State filed a letter with the Commission (J. A. 61-2), stating that while the matter of adjudication was solely one for the Commission, "the Department requests that in its deliberations on the claim the Commission give appropriate consideration to the statements made at various times by [three different Department representatives] with respect to this claim". Those statements, which included the chief negotiator's memorandum (J. A. 46) and the two Department letters

(J. A., 45, 46-7) referred to above, were interpretations of the Agreement as including petitioner's claim within the scope of the Agreement despite her noncitizenship. The Commission, however, in its Final Decision (J. A. 55-61), adhered to its Proposed Decision, again without reference to the two State Department letters or the chief negotiator's memorandum and with only brief reference to the letter-release (Pars. 12-14, J. A. 5-6).

The Court of Appeals, in affirming the lower court's dismissal of the complaint, held that the Commission's decision "is not—under the circumstances—one that we are permitted to review under Section 4(h) of the International Claims Settlement Act of 1949, as interpreted in *de Vegvar*". (App. p. 2a, infra) The reference is to the Court's own decision in *de Vegvar* v. *Gillilland*, 228 F.2d 640, cert. denied, 350 U.S. 994. The Court also held that whether petitioner's claim was or was not released by the United States was "something we need not undertake to decide, as our disposition of the case would not in any event turn on the point" (App. p. 3a, infra). The Court concluded its discussion of the problem arising from release of the claim by saying: "In any event, it does not follow that this court is empowered to set aside the Commission's adverse determination" (App. p. 4a).

REASONS FOR GRANTING THE WRIT

The issue in this case is one of reviewability. That issue turns on important questions of constitutional law, administrative law and rights of private persons under international agreements, which have never been determined by this Court. These questions are of vital interest because they involve the initial determinations of the Foreign Claims Settlement Commission, an administrative agency recently established to be a permanent agency for the settlement of foreign claims of

United States nationals. They also involve the extent and effectiveness of a nonreviewability provision in the enabling statute which has been interpreted in the lower courts to preclude judicial review even where the Commission violates the mandate of the applicable international agreement and the principles of adjudication laid down in the enabling statute itself. The reviewability question is critical to petitioner's rights since the Yugoslav Claims Fund, here involved, is the only source of funds from which her claim can be paid; once that Fund is distributed, petitioner's case is moot. If she cannot recover from that source, she cannot recover at all, and her rights can never be vindicated.

There can be no conflict of decisions of courts of appeals. There is of course no statutory provision for review; all actions would therefore have to be brought in the District of Columbia, the official residence of the members of the Foreign Claims Settlement Commission and the Secretary of the Treasury. Review, if it is to be granted, must therefore be granted in this case or a similar case coming from the Court of Appeals for the District of Columbia Circuit.

This case arises as a consequence of (1) the release by the United States of Yugoslavia's obligations to petitioner, and (2) the decision of the Foreign Claims Settlement Commission denying petitioner's claim to participate in the Yugoslav Claims Fund solely because of noncitizenship at the time of the loss.

I

Review Because of the Constitutional Issues

Section 4(h) of the International Claims Settlement Act does not (and could not) prohibit judicial review here because of the constitutional issues involved. The questions leading to the constitutional problems of this

case are these: Is the release by the United States of a private claim against a foreign country, in the course of an executive agreement with that country, a taking of private property for public use within the meaning of the Fifth Amendment? Where a lump sum is received from the foreign country in exchange for the release of all private claims against it, can the "just compensation" right of the released claimant attach to that Fund? Can the Congress preclude vindication of the constitutional right to just compensation? We proceed to take up those questions in the context of this case.

It is well settled that a claim against a foreign country is property. This Court so held in *Williams* v. *Heard*, 140 U.S. 529, and that proposition has never been questioned. Whether the release by the United States of such a claim is a Fifth Amendment "taking" has been squarely considered, so far as we know, in only two cases, both in the Court of Claims and both in the 19th century; it has never been decided by this Court and appears not to have decided by any court during the present century, though the question is—as we demonstrate later—of growing and even urgent importance. The two decisions of the Court of Claims are *Meade* v. *United States*, 2 C. Cls. 224, aff'd 76 U.S. 691, and *Gray* v. *United States*, 21 C. Cls. 340.

In both *Meade* and *Gray*, the Court of Claims held squarely that this country's release, by treaty, of a private individual's claim against a foreign country was "such an appropriation of private property to public use as comes within . . . the provision of the Constitution" and "must be paid for in the same manner" as any other property covered by the Fifth Amendment (*Meade*, 2 C. Cls. at 275). The Court reaffirmed that holding in *Gray*, saying that while the United States or any government had the right to release private

claims, if that seemed beneficial to the country, the person "whose property is thus sacrificed for the safety and welfare of his country has his claim against that country; he has a right to compensation" (21 C. Cls. at 393) under the Fifth Amendment.

The principle thus enunciated by the Court of Claims was later characterized by it as "well established law", *United States* v. *La Abra Silver Mining Co.*, 29 C. Cls. 432, 511, and it appears to have been accepted by the State Department. Letter of Secretary of State, May 10, 1909, 27 Op. Att'y Gen. 331. The problem has not been the subject of judicial cognizance since the *Meade* and *Gray* cases, and we had not thought the Court of Claims' proposition was in question[3] until the Government in the court below, relying upon the decisions of this Court in *Meade* v. *United States*, supra, and *Blagge* v. *Balch*, 162 U.S. 439, vigorously denied that the release of petitioner's claim gives rise to any rights under the Fifth Amendment. As to the *Meade* case, the Government contended that this Court held that Meade's property was not "taken" and reversed the contrary finding of the Court of Claims. Certainly this Court's opinion does not say that, and the proper interpretation of the decision seems to be that this Court did not reach the constitutional question because Meade, having consented to the compromise of his claim, was relegated to his pro rata share in the distribution of the $5,000,000 fund and could not then assert his rights generally against the United States, as he had attempted to do in that case; but it must be conceded

[3] Nor did a recent commentator, writing just before the instant case arose. See Ely, *A Hidden Hole in the Fifth Amendment: Treaty Power Versus Property Rights: A Substitute for the Bricker Amendment*, 59 Dickinson Law Review 299 (1955).

that this Court's opinion is not clear and that there is substantial doubt as to the meaning of its decision. The decision in *Blagge* v. *Balch*, supra, has the effect of further confusing the problem. This Court was there faced with the problem of interpreting the term "next of kin" in a statute appropriating money to pay the French Spoliation claims involved in the *Gray* case. In the course of its opinion, the Court observed (162 U.S. at 457) that the "payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace, and not of right." On the basis of this statement, the Government argued below that this Court overruled the decision of the Court of Claims in the *Gray* case and held that the release of a private claim against a foreign country does not give rise to a right of just compensation under the Fifth Amendment. There was no such issue in that case, and petitioner does not read *Blagge* v. *Balch* as being more than a determination by this Court that one group of relatives, rather than another, was intended by Congress; but again, the statement quoted above may honestly be thought to cut across the clear holding of the Court of Claims.

The effect of this Court's decisions in *Meade* and in *Blagge* v. *Balch* has been to cast doubt upon, without either confirming or reversing, the constitutional principle enunciated by the Court of Claims, a principle accepted as late as 1909 by Secretary of State Wickersham when he cited the *Meade* and *Gray* cases in the Court of Claims as authority for the proposition that "when private property is taken by treaty it must be compensated for." Letter of Secretary of State, May 10, 1909, 27 Op. Att'y Gen. 331. *Blagge* v. *Balch* and *Meade* caused one of our leading commentators on international law to observe that "[a] claim may be

renounced or surrendered for reasons of public policy, and the government escape legal liability, . . . whatever the equitable considerations in favor of just compensation to an individual whose private claim is relinquished for a public advantage. . . . " Borchard, *Diplomatic Protection of Citizens Abroad* (1915), p. 363. The court below, though its opinion is cryptic, cited this Court's decision in *Meade* apparently in some such connection. (App. p. 4a, infra). In order to resolve the confusion incident to this Court's decisions in *Meade* v. *United States,* supra, and *Blagge* v. *Balch,* supra, and to resolve a question of obvious importance affecting the Government in the conduct of its foreign relations and thousands of persons with present or prospective claims against foreign countries, this Court should grant certiorari to consider whether the release of the obligations of Yugoslavia to petitioner was a compensable "taking."

The magnitude of the issue, the number of persons affected, and the amount of money involved, although incalculable, assumes some perspective in the light of experience under prior claims agreements. The United States released individual claims not only for Spanish and French Spoliations and Yugoslav nationalization, but also, among others, claims arising out of the Spanish-American War, claims against Japan incident to World War II, and claims to reparations for property allowed to Russia under the Potsdam Agreement. The total of French Spoliation claims allowed by the Court of Claims amounted to $7,141,067.79;[4] the total of Spanish Spoliation claims allowed was $5,454,545.13;[5] and the Foreign Claims Settlement Commis-

[4] Letter from the War Claims Commission, House Doc. No. 67, 83rd Cong., p. 68.

[5] Id., p. 74.

sion made awards amounting to $18,817,404.89 on 876 Yugoslav claims and denied 671 claims.[6] For the near future, the problem is of significance primarily in connection with claims against Poland, Czechoslovakia, Hungary, Bulgaria, and Rumania. As an indication of what may be involved, it is pertinent to observe that pursuant to P.L. 285, 84th Congress, 1,059 claims totaling $259,742,036 have been filed to participate in vested Rumanian assets of an estimated $25,000,000, 2,724 claims totaling $225,816,966 as against some $6,000,000 of vested Hungarian assets, and 416 claims totaling $25,455,927 as against Bulgarian assets of approximately $3,000,000.[7] Negotiations with Poland[8] and Czechoslovakia are now pending, and since the vested assets of Bulgaria, Hungary and Rumania appear to be inadequate, it may be expected that negotiations with these countries will be undertaken or (in the case of Rumania) resumed, all leading to lump sum settlements.

The just compensation implications of lump sum settlements may make it necessary to consider what are the rights of a claimant, whose claim has been released, in the fund received from the foreign country. The problem here, it should be noted, is rather different from the problem in connection with the reciprocal renunciation of claims involved in *Gray* v. *United States*, supra, in which no monies were received or

[6] Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors (G.P.O., 1955), p. 4.

[7] Fifth Semiannual Report of Foreign Claims Settlement Commission of the United States, pp. 3-4.

[8] Public Notice of Foreign Claims Settlement Commission, June 18, 1957.

made available. Here, petitioner requested the United States to espouse her claim and thereby consented to its compromise, as in *Meade* v. *United States*, supra. If the United States had merely released her claim outright, without more, her remedy under *Gray* would appear to be in an action against the United States in the Court of Claims under 28 U.S.C. § 1491. But where the United States in fact compromised her claim in accordance with the terms of her consent and obtained, in exchange for releasing Yugoslavia from its obligation to petitioner (among others), a fund in the distribution of which she was to participate, *and where petitioner by her subsequent action, demonstrated that she was satisfied to seek satisfaction from that fund,* her just compensation rights—whatever they might be under other circumstances—may now be limited to pro rata satisfaction from the fund. *Meade* v. *United States*, 76 U.S. 691. This Court should define the nature and extent of those rights. As we see it, petitioner's general just compensation right has been transmuted, by her own actions, to a right against the Fund. It is still a constitutional right to just compensation, which cannot be cut off, but its measure is an aliquot share of the Fund. The error of the Commission and of the courts below was that they permitted the right to be destroyed entirely.

The issue of rights stemming from an international agreement "or action thereunder" is not without contemplation by this Court. In *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470, this Court found "no occasion to consider the circumstances in which an international agreement, or action thereunder, may be deemed to vest rights in private persons, or the scope of such rights in particular cases." *Z. & F. Assets*

Realization Corp. v. *Hull*, supra, at 489. These questions in part at least are now ripe for consideration, and it is important that they be resolved by this Court.

In the light of the constitutional questions outlined above, it is clear that the nonreviewability provisions of section 4(h) are not applicable to this case, for two reasons: (1) the legislative history makes clear that Congress had no idea that constitutional rights might be involved and thus had no intention that section 4(h) should preclude judicial review where such rights are involved;[9] (2) this Court has consistently construed federal statutes to avoid the conclusion that Congress intended, by withdrawing the jurisdiction of the federal courts, to defeat claims of constitutional right.[10] E.g., *Yakus* v. *United States*, 321 U.S. 414. Thus section 4(h), contrary to the conclusion of the court below, is no barrier to judicial review under the circumstances of this case, especially where the effect of an erroneous Commission decision is to deprive petitioner, finally and irrevocably, of just compensation for the release of Yugoslavia's obligations to her.

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[9] Indeed, Congress affirmatively believed that no constitutional rights would be affected. See remarks of Congressman Ribicoff, 95 Cong. Rec. 8840.

[10] Obviously the Court has been careful to avoid precipitating the issue, which has not arisen in the present century (and may never have been decided by this Court), whether Congress can withdraw the jurisdiction of the federal courts to vindicate claims of constitutional right. The answer appears to be that Congress cannot do so, *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, but cf. *Ex Parte McCardle*, 74 U. S. (7 Wall.) 506. One of our leading authorities is uncertain as to the state of the law. Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts*, 66 Harv. L. Rev. 1362.

The court below evidently did hold that judicial review is unavailable even where the effect of an erroneous Commission decision is that petitioner's property is irremediably confiscated. In the unlikely event that this Court should agree with the Court of Appeals that section 4(h) is intended to be applicable here, there would be squarely raised not only the Article III constitutional question of withdrawal of the jurisdiction of the federal courts, touched on in the previous paragraph, but also whether as a matter of procedural due process under the Fifth Amendment petitioner is entitled to judicial review no matter what Congress may have intended. See *Estep* v. *United States*, 327 U.S. 114 at 120; *Ng Fung Ho* v. *White*, 259 U.S. 276. The question of when there exists a constitutional right to judicial review has never been definitely resolved by this Court, and there appear to be no lower federal court decisions. The Court of Appeals, although its decision by implication holds that petitioner has no procedural due process right to judicial review, completely ignored this and other problems inherent in holding section 4(h) applicable in this case.

II

Review to Enforce the Statute

Wholly aside from the constitutional aspects discussed above, and without regard to the release of petitioner's claim, this case involves the problem whether the nonreviewability provisions of section 4(h) of the International Claims Settlement Act can shield from judicial review a decision of the Commission which is contrary to the mandate of the negotiators and in excess of the authority granted to the

Commission by statute.[11] This question covers the whole range of the Commission's activities under that Act; it also extends to the Commission's activities under the War Claims Act of 1948, 50 U.S.C. 2001 et seq., section 11 of which contains identical nonreviewability provisions. Initially, therefore, it is appropriate to consider the nature and extent of the Commission's activities, at least under the International Claims Settlement Act, and the potential impact of the problem presented here.

The Act originally established in the Department of State the International Claims Commission with jurisdiction over claims included within the terms of the Yugoslav Claims Agreement or within the terms of similar agreements with other foreign governments. 22 U.S.C. 1623(a). The permanent character of the Commission was emphasized by the Senate Committee, S. Rep. 800, 81st Cong., p. 1. In the words of one commissioner: "The establishment of the International Claims Commission represented a major development in the field of international claims. Heretofore, the adjudication of such claims had usually been assigned to special mixed tribunals with limited

[11] The mandate here is found in the letter-release (J.A. 36-40) and the entire Agreement as interpreted by the chief negotiator's memorandum (J.A. 46) and the two State Department letters (J.A. 45, 46-7); it is a direction from the highest authorities, the drafters of the Agreement, that the interest of Lise Haas should "be considered as a U.S. claim" (J.A. 46) even though she was a noncitizen at the time of loss. The letter-release is either a part of the basic Yugoslav Claims Agreement or is a corollary agreement of equal dignity. The mandate is carried into the statute by the requirement of section 4(a) that the Commission must apply "the provisions of the applicable claims agreement". Section 4(a) also provides that the Commission shall apply "the applicable provisions of international law, justice, and equity."

jurisdiction to resolve claims of a specified category. The International Claims Commission was the first tribunal created as a purely domestic institution intended to be a permanent body having jurisdiction over claims of an international character." Clay, *Aspects of Settling Claims Under the Yugoslav Claims Agreement of 1948*, 43 Georgetown L. J. 582, 583. In 1954 the functions and jurisdiction of that Commission and of the War Claims Commission were transferred to the Foreign Claims Settlement Commission, a newly-established independent government agency, by Reorganization Plan No. 1 of 1954, 5 U.S.C. 133z-15. The President's message transmitting the Plan (19 F.R. 3985) again stressed the permanent and all-embracing nature of the new Commission.

In addition to the Hungarian, Rumanian and Bulgarian programs now being executed, as discussed supra, p. 15, a number of other programs are in the process of execution.[12] The Commission has completed adjudication of claims against Panama under the convention of October 11, 1950, wherein Panama agreed to pay the United States $400,000 in settlement of the so-called El Encanto claims. Claims aggregating $1,537,394.05 were filed, and 66 awards were made totaling $441,891.84. The Commission is in the process of adjudicating claims of American nationals against Italy arising out of the war and not provided for in the treaty of peace. A fund of $5,000,000 was received from Italy for this purpose pursuant to the terms of

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[12] All information in this paragraph is taken from the testimony of the chairman of the Commission before the House Committee on Interstate and Foreign Commerce, Hearings on Regulatory Agencies Under Jurisdiction of the Committee, pp. 223-234 (March 5, 1957).

the Lombardo Agreement of August 14, 1947. 2192 claims totalling $27,412,985 have been received. The Commission is also charged with the responsibility of processing certain pre-1933 claims against the Government and nationals of the Soviet Union. The fund available, derived from the so-called Litvinov Assignment, is approximately $9,000,000. 4013 claims have been filed totaling $4,126,383,100. Adjudication of Soviet claims is under way, and already at least one action is pending in District Court challenging the Commission's decision. *First National City Bank* v. *Gilliland*, C.A. 562-57, D.C. District of Columbia. In addition, several bills pending before Congress propose a claims program for American losses from the nationalization of properties in Czechoslovakia; there is the prospect of further lump sum settlements with respect to the nationalization of American-owned properties in Eastern Europe; and what should be by far the largest and most important program of all, the German situation (including (a) claims against Germany and (b) full or limited return of German assets), is the lively subject of numerous bills proposed both by the Administration and by individual members of Congress and seems certain to emerge as legislation in some form. The Administration proposal would provide a claims fund of $100,000,000. It seems probable that the Commission will be extremely active for the indefinite future.

In view of the permanent character of the Commission, the number of claimants and the amount of money involved in the present and executed programs, and the prospects for future activity, it is important that this Court interpret section 4(h) of the Act and determine to what extent decisions of the Foreign

Claims Settlement Commission are placed beyond the corrective powers of the federal courts. The establishment of the Commission represented an important development in the field of international claims insofar as it created a permanent domestic agency with jurisdiction of claims of an international character, and as a consequence it would be appropriate early in the life of the Commission to determine its relationship to the federal judiciary. See Coerper, *The Foreign Claims Settlement Commission and Judicial Review*, 50 Am. Jour. Int. Law 868 (1956). The court below intimated that it thought section 4(h) stripped it of power to set aside a Commission decision under any circumstances. That court's interpretation of the strength of section 4(h) has now been made even clearer in its subsequent decision in *American and European Agencies, Inc.* v. *Gillilland*, No. 13,447, decided June 27, 1957, in which it held that the mandate of this very statute that any claimant "shall be entitled . . . to a hearing" was of no avail to a claimant who did not receive a hearing, because (said the court) even that issue is made nonreviewable by section 4(h). The court concluded that "the statutory bar . . . precludes us" from compelling the Commission to give the hearing required by statute.

In the case at bar, the Commission ignored the mandates of both clauses of section 4(a) of the enabling Act—to apply "the provisions of the applicable claims agreement" and to apply "the principles of international law, justice, and equity". These are rules of decision which the Congress intended the Commission to follow *before* the nonviewability provisions of section 4(h) should come into play. Congress could not have intended that one of its statutory prescriptions,

section 4(h), was to cut across and to eliminate another; the statutory provisions are to be read together in harmony. The only Commission action entitled to the nonviewability provision is one which follows the rules of decision. Here, the Commission disregarded the specific agreement concerning petitioner's claim and disregarded the settled principles of international law that a state is bound to carry out in good faith the obligation which it has assumed (see Art. 20, Harvard Draft Convention, 20 Am. Jour. Int. Law (Supp. II, 1935)); that an international agreement possesses the same essential qualities as private contracts between private individuals; and that the intent of the parties is of controlling significance in contractual international agreements. McNair, *The Law of Treaties* (1938) p. 185; Brierly, *Law of Nations* (2d Ed., 1935) p. 199.

This Court has in many cases noted the essential difference between (1) the traditional power of the federal courts to determine whether an administrative body has exceeded its statutory authority and (2) review of its decisions on question of law and fact, e.g. *Stark* v. *Wickard*, 321 U.S. 288, dissenting opinion of Justice Brandeis in *Crowell* v. *Benson*, 285 U.S. 22, 29, and under statutes which in varying language appear to preclude judicial review, it has repeatedly held that judicial review is available in connection with jurisdictional matters. E.g. *United States* v. *California Eastern Line*, 348 U.S. 351; *United States* v. *Williams*, 278 U.S. 255; *Reynolds* v. *United States*, 292 U.S. 443. Numerous other decisions of the Court, although upholding administrative action in the particular case, have also emphasized the traditional judicial power to keep administrative agencies within their jurisdiction; e.g. *Board of Governors* v. *Agnew*,

329 U.S. 441, 444, *Stark* v. *Wickard*, supra at 309-10, and in *Social Security Board* v. *Nierotko*, 327 U.S. 358, it was stated that (p. 369): "An agency may not finally decide the limits of its statutory power. That is a judicial function."

The decision of the Court of Appeals is not only out of harmony with the disposition of this Court, in connection with strictly domestic agencies, to permit review of jurisdictional questions; it is inconsistent with available precedent in international law and with the decision of this Court in *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470. The Permanent Court of Arbitration early determined that decisions of international tribunals established pursuant to claims conventions which declare their decisions to be final and conclusive may be attacked on the ground that the tribunal exceeded its jurisdiction. *Orinoco Steamship Co. Case*, Scott, Hague Court Reports (1916), p. 226. In the only decision of an American court to deal with review of decisions of claims commissions having jurisdiction over international claims, this Court, in *Z. & F. Assets Realization Corp.* v. *Hull*, supra, although upholding the Secretary of State's certification of an award of a Mixed Claims Commission for payment out of a special fund in the Treasury, first reviewed to the extent necessary to determine whether there was a "basis for concluding that the Secretary of State in certifying the awards did not act after due deliberation or fail to express his considerate judgment, as we think the statute contemplated." 311 U.S. at 489. The clear implication of the decision, as appears more fully from the concurring opinion, is that had the Secretary of State not acted with "due deliberation" and "considerate judgment" the Court would have reversed his

certification. If a limited measure of judicial review is available of decisions of a mixed claims commission, it would seem a fortiori that judicial review is available to determine whether the Foreign Claims Settlement Commission—a domestic agency—has acted within the limits of the authority granted it by statute and by the international agreements it administers.

The decision of the Court of Appeals in this case is also clearly inconsistent with the philosophy underlying the judicial review provisions of the Administive Procedure Act, as reflected in many recent decisions of this Court. E.g. *Brownell* v. *Tom We Shung*, 352 U.S. 180; *Shaughnessy* v. *Pedreiro*, 349 U.S. 48. As was said by the committees of the House and Senate in connection with the review provisions of the Administrative Procedure Act:

> "It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks drawn to the credit of some administrative officer or board." Administrative Procedure Act, Legislative History, Sen. Doc. 248, 79th Cong., p. 212 (Senate Judiciary Committee); p. 275 (House Judiciary Committee).

III

The Issue of Government Morality

The case involves a fundamental issue of Government morality. The United States included petitioner's claim for bargaining purposes with Yugoslavia and released Yugoslavia's obligations to petitioner as part of the quid pro quo for the receipt of the $17,000,000

Fund. At the crucial point of Congressional consideration of the implementing legislation, the sponsoring agency dissuaded petitioner from seeking clarifying legislation by representing to her that she was already covered by the Agreement, and produced a "certified" memorandum of the chief negotiator to that effect. Years later, when petitioner had lost her opportunity to remedy any possible doubt, the Government was not willing to pay out the monies it had represented to be attributable to her property interest, now destroyed. Cf. *Caldera Cases*, 15 C. Cls. 546, 594:

> "it is not for any judicial tribunal to assume to reverse that decision of the national Executive [that certain claims against China were valid], and so put our government in the unjustifiable and unenviable position before the world of having demanded money from China to pay certain claimants, and then denying them indemnity out of that money on the ground that, on principles of international law, they never had any claim whatever against China.

CONCLUSION

The Court of Appeals hardly touched upon any of the perplexing issues in this case. It held simply that: "The decision of the Commission denying Mrs. Haas' claim is not—under the circumstances—one that we are permitted to review under Section 4(h) of the International Claims Settlement Act. . . ." By necessary implication, it also held that the statute as so interpreted did not violate procedural due process and either that petitioner had no constitutional right to participate in the Fund or, if she had, that she was not entitled under Article III of the Constitution to access to a federal court to vindicate her constitutional right. It necessarily held also that it could not compel ad-

herence to a mandate, laid down by the Agreement and its implementing statute, that petitioner's claim should be eligible as a United States claim.

The issues raised herein involve basic and important questions of constitutional and administrative law. The Court of Appeals handled them inadequately and its decision that judicial review is unavailable is clearly erroneous. We ask that a writ of certiorari be granted.

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